



POLICE DEPARTMENT

March..28, 2011

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Victor Reynoso
Tax Registry No. 942873
107 Precinct
Disciplinary Case No. 85068/09

The above-named member of the Department appeared before me on January 10, 2011, charged with the following:

1. Said Probationary Police Officer Victor Reynoso, assigned to the 107th Precinct, on or about February 15, 2009, while off-duty and at a location known to this Department, in Queens County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Probationary Police Officer was involved in a physical altercation with two individuals, identities known to the Department.

P.G. 203-10, Page 1, Paragraph 5 – GENERAL REGULATIONS

The Department was represented by Daniel Maurer, Esq., Department Advocate's Office, and the Respondent was represented by Michael Martinez, Esq.

The Respondent, through his counsel, entered a plea of Not Guilty to the subject charge. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

The Respondent is found Not Guilty.

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SUMMARY OF EVIDENCE PRESENTED

The Department's Case

The Department called Lieutenant Richard Langmaack as a witness

Lieutenant Richard Langmaack

Langmaack is an over 20-year member of the Department currently assigned to the Transit Bureau Investigations Unit. He testified that he has worked in that unit for about eight months. Prior to that assignment, he worked in Transit District 20 and prior to that, he was assigned to the Queens South Investigations Unit (QSIU). Langmaack stated that on February 15, 2009 he was assigned to QSIU. He had worked in that unit for approximately four years.

Langmaack testified that he was assigned an investigation involving Respondent which occurred on February 15, 2009 at [REDACTED]. By the time he was assigned the case, Respondent had already been arrested and suspended from police duty. Langmaack explained that he was not present, but from what he was able to determine, an altercation took place at the Greenpoint location. The duty captain who responded to the scene made a decision to arrest all the parties involved in the altercation. Four people were arrested, including Respondent, who was the only member of the service arrested. Based on Respondent's arrest, he was suspended from duty.

After reviewing all of the evidence in the case, Langmaack testified that Respondent attended a party with his girlfriend, [REDACTED], and cousin [REDACTED]. It did not appear that Respondent knew the people who threw the house party. Sometime around 3:00 a.m., when the party was wrapping up, [REDACTED] went to use the

bathroom. The party was in the basement and there was only one bathroom down there. [REDACTED] ([REDACTED]) was standing outside the bathroom waiting to use it, but [REDACTED] was taking too long. [REDACTED] waited another five or ten minutes and then banged on the bathroom door. Langmaack stated that [REDACTED] exited the bathroom with some type of force because the door hit [REDACTED].

An altercation ensued between [REDACTED] and [REDACTED]. [REDACTED]'s brother, [REDACTED] ([REDACTED]) joined in to assist his brother and Respondent also joined in. Langmaack described the scene as a "bar brawl." Langmaack continued that according to [REDACTED]'s statement, once [REDACTED] came out of the bathroom, an altercation ensued and they swung and punched at each other. Respondent came over swinging. [REDACTED] did state that at some point Respondent identified himself as a police officer. He could not recall if it was at the beginning or the end of the altercation but Respondent pulled out his Department shield.

According to Langmaack, [REDACTED]'s statement indicated that he observed his brother [REDACTED] trying to go to the bathroom. He knocked on the bathroom door and the door was kicked open (from within the bathroom). He ran over to break up the fight which just started, but he was grabbed from behind by Respondent. He stated that Respondent then placed him in a headlock and began to punch him in the face and head area. Langmaack stated that he does not have in [REDACTED]'s statement that Respondent identified himself as a police officer. Langmaack also testified that the brothers' mother, [REDACTED], was interviewed regarding the events of February 15, 2009. He stated that [REDACTED] never stated that Respondent identified himself as a police officer.

Langmaack stated that the statements indicated that once the fight broke up

Respondent went outside with [REDACTED], and [REDACTED] and waited for the responding sector cars to arrive. Langmaack said that in his 20-year experience as a police officer and an investigator, Respondent, who was a probationary police officer at the time, should have just walked away from the situation. If he did attempt to break up the brawl and it did not work, he should have not gotten involved physically by swinging and throwing punches. Langmaack further surmised that upon reviewing photographs of everyone, Respondent and [REDACTED] were not really injured but the two brothers had "road rash" all over their head. He explained that the brothers had contusions and abrasions to their forehead, which was consistent with being held in a headlock and being punched. He determined that based on these photographs, Respondent was the primary physical aggressor.

During cross-examination, Langmaack acknowledged that he was not present during the incident. He admitted that he never interviewed the witnesses in person. He agreed that he never met the [REDACTED] brothers and only listened to their interviews. Langmaack did agree that he was present when Respondent was interviewed. When asked whether it was his lack of interest in interviewing the witnesses, Langmaack explained that he felt, along with his supervisors, that the interviews conducted were enough to put together a case. He stated that he did not feel the need to conduct follow-up of the initial interviews performed.

Langmaack explained his position. He stated that since there was a criminal case pending against both Respondent and the [REDACTED] brothers, he did not initially reach out to them because of the pending matters. He stated that he did not know whether the brothers had criminal records aside from this matter. When asked whether he would

consider one's criminal history as a factor to determine one's credibility, Langmaack responded, "Sometimes we look at their criminal history to see what kind of players they are." He acknowledged that with officers, he looks at the Central Personnel Index (CPI) immediately. He admitted that with civilians, he has the power to access their information to see if they have pending cases. Langmaack stated that he does not know whether the [REDACTED] brothers have criminal records.

With respect to the 911 calls made, Langmaack testified that he reviewed the three phone calls and to his knowledge, the three calls made by Respondent's girlfriend, an off-duty auxiliary police officer, were the only calls made regarding this incident.

Langmaack summarized his closing report for this investigation. He acknowledged that a sergeant responded to the scene and Respondent not only flagged down the police vehicle, but he also identified himself as a member of the service. He agreed that three supervisors completed paperwork and stated that Respondent was fit for duty. Langmaack admitted that Respondent gave a statement that he tried to break up a fight that his cousin was involved in, but he was struck by two brothers.

Langmaack acknowledged that he never interviewed the [REDACTED] brothers. He stated that the case was pending against them in criminal court. He acknowledged that eventually the case was dismissed against everyone on March 15, 2009, but he never attempted to interview anyone after that. Langmaack admitted that the case was dismissed against all parties as he recalled because Respondent was in the military and about to be deployed. He needed a resolution of this misdemeanor desk appearance ticket before being deployed. Eventually Jim Leander from the District Attorney's office facilitated dismissing the case.

Langmaack acknowledged that in the report prepared by Sergeant Concepcion, who conducted interviews of Respondent and the [REDACTED] brothers close to the incident time, the brothers alleged that a physical altercation took place, but they made no specific allegations against Respondent. Respondent, however, stated that the [REDACTED] brothers assaulted him. Langmaack agreed that Concepcion indicated in his report that Respondent had abrasions/minor injuries to his face.

Langmaack agreed that the Department's position would be that Respondent should have walked away from a potentially volatile situation. He did acknowledge that if a police officer sees an incident that he believes would constitute a crime, he has a duty to take police action, however Langmaack stated that he did not believe the matter involving Respondent was such a situation. When asked if Respondent observed two people beating up someone on the ground would that be a situation that he should react to, Langmaack stated, "Every situation is unique."

Langmaack explained that he had a "totality of information" regarding the incident Respondent was involved in. He stated, "Number one, it was a questionable party." He said that he has been to numerous house parties in his career and they never escalated to where strangers are banging on bathroom doors and acting in that manner. Langmaack was asked whether the fact that the party was in the basement of a house made it questionable, but he denied that. He was asked whether something was wrong with the party prior to the altercation breaking out. He said that he had no idea what kind of party it was. Langmaack acknowledged that he stated earlier in his testimony that there was some question as to whether Respondent should have even been at the party.

Langmaack testified that Respondent was the only person that he directly

interviewed in this investigation. He could not recall whether Respondent informed him that a female cousin of his invited him to the party. Langmaack stated that he did not do any follow-up as to why Respondent was at the party. He agreed that Respondent had not been drinking that night, but he never questioned the [REDACTED] brothers as to whether they consumed alcohol. Langmaack said that it was his belief that Respondent did not intervene to separate the parties fighting, he joined in. He admitted that this belief was based on statements the [REDACTED] brothers made to other people because he never tried to locate them to speak to them.

Langmaack also testified that when he interviewed Respondent, he "played the victim." He stated that Respondent made it seem as if he was just blocking punches thrown at him rather than being more physically involved in the altercation. Langmaack acknowledged that it was someone from Respondent's party who called 911. He agreed that it was Respondent who flagged down the patrol car. He admitted that the duty captain deemed Respondent a victim by making the [REDACTED] brothers defendants and arresting them.

Langmaack stated that he believed the [REDACTED] brothers were in their 20s. He said he did not have their dates of birth with him. He said he had no idea why they were at the party. He acknowledged that [REDACTED] said Respondent identified himself by pulling out his shield. Langmaack said Respondent was "swinging with his shield in his hand." Langmaack agreed that no one in their statement alleged that Respondent was "swinging with his shield in his hand." Langmaack admitted that Respondent told him during his interview that he had his shield during the altercation, but he did not have a chance to produce it.

Langmaack acknowledged that a police officer can be punished for failing to take police action in certain situations. He agreed that the auxiliary police officer who was with Respondent called 911 promptly and contemporaneous to the altercation. Langmaack stated that the fact that someone is involved in a physical altercation is not misconduct in and of itself. He explained that with respect to Respondent, he decided that Respondent's involvement in the dispute which escalated into a physical altercation where the others were injured amounted to misconduct. He agreed that he made this determination without ever speaking to the other parties involved.

Upon questioning by the Court, Langmaack stated that he did not know from [REDACTED]'s statement whether Respondent identified himself as a police officer at the beginning when he approached the brothers or at the end of the incident. He agreed that there was no reference to this in his report. Langmaack stated that it would make a difference if Respondent walked over and identified himself as a police officer first before throwing any punches, but he did not know the sequence of events. Langmaack acknowledged that [REDACTED] was not part of the altercation. He agreed that if Respondent had identified himself as a police officer to the [REDACTED] brothers, their mother, [REDACTED], may not know because she was not part of the altercation.

Regarding whether Respondent would be guilty of misconduct, Langmaack was asked if Respondent identified himself as a police officer, and the parties did not stop the altercation, and Respondent then had to defend himself and he gets the best punches in because of his military training, Langmaack testified that he would not be guilty because he happened to handle himself better in the situation.

Respondent's Case

Respondent offered the compact disc recording of the three 911 calls made on February 15, 2009. It was received in evidence as Respondent's Exhibit (RX) A. In essence, Respondent's girlfriend, Auxiliary Police Officer [REDACTED], made a frantic call to 911 stating that her boyfriend, a police officer, was being beaten up by three men and they needed help. She called two more times, less frantic in each call but reiterating the location and the same information.

Respondent testified in his own behalf.

Respondent

Respondent is a four-and-a-half year member of the Department currently assigned to the 107 Precinct. He explained that he joined the Department in July 2006. Approximately a month after being in the Police Academy, he was activated to the military and had to leave the Department. He was then sent to Africa. On January 10, 2007 he came back and was reinstated to the Department and sent back to the Police Academy. Respondent explained that he had been a member of the United States Marine Corps for eight years.

Respondent testified that on February 14, 2009, he worked routine patrol doing a 4 p.m. to 12 a.m. tour of duty in the 107 Precinct. He stated that although it was Valentine's Day, he had no plans given the hours that he had to work. He was expecting to go home at the end of his tour. Respondent said that he had been dating Auxiliary Police Officer [REDACTED] at the time. They had been dating for two years. She was disappointed that they had no plans. When he finished work, Respondent called

██████████ and told her they would go out for a quiet dinner. He picked her up around 12:40 a.m., which was February 15. Respondent said he also invited his cousin, ██████████, ██████████ and her husband, ██████████. They went out to dinner at a restaurant in Astoria, Queens.

Respondent said that at some point, he received a call from another cousin named ██████████ who invited him to a party at a Knights of Columbus hall. ██████████ stated that she knew Respondent would be deployed soon, and she wanted to see him before he left. She also stated that a lot of the family would be at this party. She convinced Respondent that he should stop by and he did not have to stay long. Respondent said that the party was in the lower level of a three-family home. He stated that he did not know the people who were hosting the party. He knew he would be deployed around May 18, 2009 to Afghanistan.

Respondent stated that they arrived at the party about 1:30 a.m. He stated that the lower level had a party room. He estimated that 25 people were at the party. He introduced his girlfriend and cousin to people at the party. His cousin also knew some of the relatives there. He estimated that he was there about ten minutes when ██████████ got up to go to the bathroom, which was approximately 25 feet away from where they were seated. Respondent said his back was to the bathroom.

About five minutes later he heard his cousin, ██████████, state that there was a fight. Respondent paid it no mind until he heard her say that it was her husband in the fight and she ran in the direction of the commotion. Respondent explained that he followed behind his cousin. He observed ██████████ against the wall on the ground being punched and kicked by more than two people. He attempted to "pull these guys out." He said he and ██████████'s

wife attempted to separate the parties. Respondent said he then verbally identified himself as a police officer. He observed that [REDACTED] was able to get [REDACTED] out, but he (Respondent) ended up on the "bottom of the pile" getting beat up. Respondent said he did not know the people, but someone dragged his legs pulling him down to the floor and he was punched. Eventually, his girlfriend was able to pull him out and she immediately called 911. Respondent said that he was able to get outside, but he denied ever punching or kicking anyone in the face or body. He also denied throwing a chair. He stated that a chair was thrown at him, but it was never contained in any report. He said luckily his girlfriend was never hit as she pulled him out of the melee and they went outside.

Respondent said he never attempted to leave. He knew [REDACTED] called 911 and they waited for the police. As an aside, Respondent testified that [REDACTED] is currently on maternity leave and due to have a baby in a week. He noted that his cousin, [REDACTED], passed away last October while he was deployed. He estimated that the whole altercation took about five minutes and by the time they got outside, the police were arriving. Respondent stated that he identified himself as a police officer to the responding officers. He informed them that he was assaulted by individuals inside the location. They went inside and Respondent was able to identify two young men who assaulted him. He said they were the [REDACTED] brothers and they were arrested. They were all transported to the station house. Respondent said he was informed about two to three hours later that he would be arrested based on a cross-complaint.

Respondent stated that he was shocked when he learned that he would be arrested. He said that he followed Department procedure. He was out and did not drink alcohol or carry his firearm. 911 was also called and he remained at the scene. Respondent said he

received a desk appearance ticket returnable in May 2009. Respondent stated that he was told that he would be suspended for 30 days, but was actually suspended for three or four months. Respondent said the criminal case also affected his deployment because they were in the same month. He made efforts to ascertain whether his criminal case could be moved up otherwise he could not deploy. He also had to inform the Marine Corps of what transpired.

Respondent explained that he met with the Assistant District Attorney Jim Leander, along with his attorney and his cousin and his criminal case was dismissed. He also decided to drop his cross-complaint against the [REDACTED] brothers and their case was also dismissed. Respondent testified that he was eventually deployed to Afghanistan for nine months and he returned to the United States in April 2010. Respondent said he returned to work in September 2010 and was served with Charges and Specifications in October 2010. He stated that that was the first time he had seen the charges. He explained that he had an official Department interview before he was deployed. He was on active duty with the military at the time, but had not been deployed yet. Respondent said his current duty status with the Department is full duty. He is now in the reserves with the military. He is currently awaiting deployment to a special team in either Iraq or Afghanistan.

With respect to the incident, Respondent said that it was not his intention to get into a fight. He just wanted to separate the parties and get his people and himself out of there. He explained that he had his shield, but never had a chance to display it because he was assaulted. He further explained that seeing [REDACTED] being punched and kicked, as a police officer, he felt he had to take action. He attempted to deescalate the situation or

render aid, and that's what I did I tried to render aid He stated that the Patrol Guide does not distinguish between taking police action for a member of the public or a member of one's family He also stated that he did not start the physical altercation

During cross-examination, Respondent stated that his girlfriend called 911 Respondent said that when he observed the commotion, he did not reach for his cell phone and call 911 He also did not ask his girlfriend to call 911 He acknowledged that he learned later that she called 911 Respondent stated that once he identified himself as a police officer, they turned toward him and began swinging at him The first time he displayed his shield was inside the building to Sergeant Concepcion Respondent explained that he tried to grab his cousin, but she pulled away with [REDACTED] and Respondent was caught up in the melee.

Upon questioning by the Court, Respondent denied throwing punches He denied holding [REDACTED] in a headlock and punching him He stated that he was punched in the back of the head and pulled to the ground He did not have a chance to swing and could only block punches as he was against the wall At the time of the incident, Respondent said that two months prior, in December 2008, he went to see his investigator to close out his case, so technically, he was off of probation at that time He could not understand how he could still be on probation No one ever verified that information for him

FINDINGS AND ANALYSIS

Respondent stands charged herein with engaging in conduct prejudicial to the good order, efficiency and discipline of the Department, to wit said Police Officer was involved in a physical altercation with an individual, identity known to the Department. Respondent is found Not Guilty. The Department presented this hearsay case through a hearsay witness who conducted no interviews of potential witnesses, namely the [REDACTED] brothers, against Respondent, in essence double hearsay. None of the witnesses to the events who either did or did not make allegations against Respondent appeared in this forum to testify.

Lieutenant Langmaack testified that on February 15, 2009, Respondent and at least two other people were arrested by the New York City Police Department for being involved in a physical altercation at a party. Langmaack testified that Respondent was subsequently arrested, suspended and his firearm, shield and identification card were secured. He then inherited the case while Respondent was on a lengthy suspension. Since Respondent had this pending criminal case, he was not interviewed on the night in question. Photographs, however, were taken of Respondent's condition, which allegedly showed bruising to his lower back and the right side of his face.¹

Langmaack testified that because of the pending criminal cases against the [REDACTED] brothers, he did not attempt to reinterview them regarding the altercation. Interviews had been conducted of them on the incident date and he felt that he had enough in reading those interviews to substantiate a case. He did, however, interview Respondent when he was on active military duty but prior to his deployment overseas. At some later date, all

¹ Photographs were marked for identification Department Exhibits 1 A-E, but they were not offered in evidence.

criminal charges were dismissed against all parties involved, yet the other witnesses in the case were still never interviewed by Langmaack, who was assigned to the case

Respondent testified that he was at a Valentine's Day party with his then-girlfriend, an auxiliary police officer, [REDACTED], his cousin and her husband, [REDACTED] went to the bathroom and the next thing he knew, his cousins said a fight was ensuing and her husband was involved Respondent testified credibly that he used his discretion, which was to attempt to separate the parties who were, by Respondent's account, assaulting his cousin's husband Respondent described [REDACTED] being on the floor near the wall as more than two people punched and kicked him Respondent said he identified himself as a police officer and instead of the assault stopping, the attackers turned their attention toward him and began to punch and assault him

Respondent said eventually his girlfriend was able to pull him out of the mêlée and she called 911 and they waited outside of the building for the police to arrive Once the police arrived, Respondent identified himself as a police officer and informed them that he was assaulted The police then went inside the building and Respondent was able to identify the [REDACTED] brothers as the people who assaulted him and they were arrested Respondent said all parties involved were transported to the station house and three hours later, he was informed that he would also be arrested because of a cross-complaint

Respondent was arrested and suspended for about 96 days as a result of this incident

The Assistant Department Advocate (Advocate) argues that because the [REDACTED] brothers allege that [REDACTED] and [REDACTED] ([REDACTED]) were in a shoving match

until Respondent got involved, then the altercation became more physical, that Respondent is somehow responsible for what transpired. The Advocate further alleges that because Respondent was in the room and did not step back and just verbally command that he was a police officer, or leave the party or call 911, that he is guilty of misconduct. The Court disagrees.

Respondent denied at all times that he engaged in the conduct alleged by [REDACTED]. He denied holding [REDACTED] in a headlock and repeatedly punching him. Respondent denied throwing any punches. He stated that he tried to separate the parties and once he identified himself as a police officer, the assault then turned to him being attacked. He stated that he spent his time blocking punches rather than throwing them. He testified that he ended up on the floor against a wall, blocking punches. In fact, evidence suggests that it was the [REDACTED] brothers who initiated this mêlée. One of them banged on the bathroom door as [REDACTED] used the bathroom because he was taking too long. The fact that [REDACTED] had to exit the bathroom and upon his exit, the bathroom door may have struck one of the [REDACTED] brothers does not mean that [REDACTED] precipitated the altercation either. The [REDACTED] brothers, who were physically engaged with [REDACTED] and outnumbering him, seem to be at fault. One of the [REDACTED] brothers could have been standing too close to the door such that when the person inside the bathroom exited, the door hit him. The end result is that the [REDACTED] brothers commenced to beat [REDACTED].

Although it was determined that Respondent was fit for duty and had not been under the influence of alcohol during the altercation, there does not appear to have been any such determination made of the [REDACTED] brothers who were involved in the incident. Langmaack, the investigator, did not know their physical condition. Nor did he inquire

about it. He did not know why they were at the party. He had not spoken to them in the course of his investigation. He simply concluded that Respondent was wrong to be at the party in the first place and should have walked away despite seeing [REDACTED] being punched and kicked.

Furthermore, there are inconsistencies in the hearsay as to what occurred. According to the accounts of the patrol supervisor, Sergeant Concepcion, who responded first to the scene, neither of the [REDACTED] brothers made any allegations of misconduct against Respondent to him. And at least [REDACTED] acknowledged that Respondent identified himself as a police officer. The Court finds it hard to believe that after identifying himself as a police officer, Respondent would then commence to assaulting the [REDACTED] brothers when he was outnumbered in the mêlée. In addition, he was not found pummeling the [REDACTED] brothers when the police arrive. Respondent was outside of the building explaining how he was assaulted. But no one seemed to believe his account since he ended up arrested. This is despite the fact that it was Respondent's girlfriend who made the three frantic 911 calls that her boyfriend, an off-duty police officer was being assaulted (RX A). It was not the [REDACTED] brothers who called for assistance from 911.

Assuming *arguendo* that Respondent did attempt to protect himself using his training as a U.S. Marine, the fact that the two brothers appeared to be more injured than Respondent still does not amount to misconduct *per se* on Respondent's part. He may have been defending himself against an assault he did not initiate.

All parties at the scene were arrested irrespective of what role they played in the altercation. Later, all charges were dropped against all parties and Respondent was

suspended for a total of 96 days as per the Assistant Department Advocate

The hearsay statements as told through Investigator Langmaack alleging that Respondent was involved in a physical altercation involving other people without evidence of his actual participation does not establish that he engaged in misconduct by a preponderance of the credible evidence. In fact, there is no credible evidence to establish that fact at all. All that can be established was that he was present when the altercation broke out and his mere presence during the altercation in and of itself does not amount to misconduct. (See Disciplinary Case No. 85071/09, a four-year member of the service found Not Guilty of being involved in a physical altercation while off-duty). Respondent exercised his judgment while off-duty and attempted to break up a physical altercation. At least one participant acknowledged that Respondent identified himself as a police officer. Once the incident continued awry, efforts were made by Respondent to get away from the altercation by going outside and three 911 calls for help were made by his girlfriend as they waited for the police to arrive. This was the best he could have done given the circumstances.

Accordingly, I find Respondent Not Guilty. I also recommend that all time, pay and benefits lost by Respondent while on suspension for 96 days be restored.

APPROVED
OCT 12 2011
RAYMOND W. KELLY
POLICE COMMISSIONER

Respectfully submitted,

Claudia Daniels-DePeyster
Claudia Daniels-DePeyster
Assistant Deputy Commissioner – Trials